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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/771,537 | 02/05/2004 | Yoshiaki Saito | 247627US-2SRD DIV | 2807 |
| 22850 | 7590 | 06/23/2004 | EXAMINER | |
| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | NGUYEN, THINH T | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2818 | |

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/771,537

Applicant(s)

SAITO ET AL.

Examiner

Thinh T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/912,321.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED OFFICE ACTION

1. Claims 22-65 are pending in the application

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (see MPEP paragraph 606.01).

A title such as ---" Magnetic memory with reduced write current " ---is suggested.

3. The specification has been checked to the extent necessary to determine the presence of all possible minor errors. However, the applicant cooperation is requested in correcting any errors of which the applicant may become aware in the specification.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 22-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,556,473 and US Patent 6,707,711. Although the conflicting claims are not identical, they are not patentably distinct from each other. Claims 22-65 of the present invention is a similar version of the claimed invention in claims 1- 24 of US patent 6,556,473 and 1-42 of US patent 6,707,711 with similar intended scope.

With respect to claim 22 –65 of the present application a person skilled in the art at the time the invention was made would know how to use the information of from the disclosure of claims 1-24 of US Patent 6,556,473 and claims 1-42 of US patent 6,707,711 in order to come up with claims 22-65 of the present application of a magnetic memory device that has magnetic films covering the main surface of the magneto-resistive film and the wirings structures for a purpose of improving a semiconductor device.

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6. When responding to the office action, Applicants are advised to provide the examiner with the line numbers and the page numbers in the application and/or references cited to assist the examiner to locate the appropriate paragraphs.

7. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) day from the day of this letter. Failure to respond within the period for response will cause the application to be abandoned (see M.P.E.P. 710.02(b)).

8. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d) in US application 09/ 912,321 which papers have been placed of record in the file.

CONCLUSION

9. The prior arts made of record and not relied upon are considered pertinent to applicant disclosure: Saito et al. (US Patent 6,201,259) disclose a Tunneling magnetoresistance element, and magnetic sensor, magnetic head and magnetic memory using the element.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thinh T Nguyen whose phone number is 571-272-1790.

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The Examiner can normally be reached on Monday to Friday from 9.00 A.M. to 6.00 P.M.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, David C. Nelms can be reached at 571-272-1787. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Thinh T. Nguyen

TTN

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David Nelms
Supervisory Patent Examiner
Technology Center 2800